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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/805,777

03/22/2004

Lee H. Angros

233.032

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30589 7590 02/13/2008
DUNLAP CODDING & ROGERS, P.C.
PO BOX 16370
OKLAHOMA CITY, OK 73113

EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

02/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/805,777 | Applicant(s) ANGROS, LEE H. | |
| | Examiner Lyle A. Alexander | Art Unit 1797 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 196-224 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 196-224 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/28/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 196-224 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yanus et al.

Yanus et al. teach in column 12 lines 17+ polysiloxanes are transparent materials and are employed in 10-75% solutions, where the balance of the solution has been read on the claimed “solvent”. Examples IV, VI, VII etc. the formation of a 200 Angstrom siloxane layers which have been read on the claimed layer of “... less than 0.0001 inch”. Column 6 lines 24+ teach the use of strong mineral acids. The claimed language “... applicator device is a pen or is pen-like” is sufficiently broad that it has been read on the means by which the 200-Angstrom layer was formed.

Yanus et al. are silent to the claimed “body, a reservoir within the body and integral to the body, and an applicator end...” to contain the polysiloxanes.

Applicant states in paragraph [0034] of the instant disclosure, applicator pens, such as the “PAP Pen” are well known in the art. Pen applicators are advantageous because they are inexpensive, light weight, small in size, can be used easily, do not require specialized training for the technician and do not require additional expensive complex equipment to control the application.

It would have been within the skill of the art to modify Yanus et al. and use a well-known type of applicator, such as a pen applicator, to gain the above advantages.

Claims 196-224 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badesha et al. (USP 4,855,201).

Badesha et al. teach in examples IV and I a Bird Applicator applying a to silicon layer of a thicknesses between 0.4 and 2 microns respectively in the presence of other solvating materials. This has been read on the claimed solvent and silicon layer of less than 0.0001 inch.

Badesha et al. are silent to the claimed “body, a reservoir within the body and integral to the body, and an applicator end...” to contain the polysiloxanes.

Applicant states in paragraph [0034] of the instant disclosure, applicator pens, such as the “PAP Pen” are well known in the art. Pen applicators are advantageous because they are inexpensive, light weight, small in size, can be used easily, do not require specialized training for the technician and do not require additional expensive complex equipment to control the application.

It would have been within the skill of the art to modify Badesha et al. and use a well-known type of applicator, such as a pen applicator, to gain the above advantages.

The Declaration under 37 CFR 1.132 filed 11/28/07 is insufficient to overcome the rejection of claims 196-224 in light of the above rejections. The Declaration by Mr. Gardner has been fully considered. The court decided In re Brandstadter, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973) that “Although an affidavit or declaration which states only conclusions may have some probative value, such an affidavit or declaration may have little weight when considered in light of all the evidence of record in the

application.” The 11/28/07 Declaration provides statements or conclusions pertaining to what Mr. Gardner believes the cited prior art, Yanus et al. and Badesha et al. teaches. There is no data presented that one having ordinary skill in the art could draw a conclusion from as to the propriety of the rejections of record. Finally, there is not even an opinion expressed by Mr. Gardner that the instant claims define over the cited prior art.

Response to Arguments

Applicant's arguments filed 11/28/07 have been fully considered but they are not persuasive.

Applicant terminal disclaimers were sufficient to obviate the Provisional Obvious Type of Double Patenting rejections.

Applicant states the 11/28/07 Declaration by Mr. Gardner concludes the Bird Applicators of the cited prior art, Yanus et al. and Badesha et al. would not be modified to a pen structure as put forth above by the Office. In addition to the above remarks concerning the Declaration, the Office notes the Declaration does not come to any conclusions, opinions or provides any evidence as to why the position of the Office is untenable. Mr. Gardner succinctly states that Bird applications are made from rigid materials and there would be no reason to make the applicator from a flexible material. The Office does not agree and believes there is sufficient motivation of record to modify these references.

Applicant reiterates their position that a person of ordinary skill in the art would not modify Yanus et al. or Badesha et al. to use the configuration of a "PAP Pen." The

Office respects Applicant's opinion, but maintains there is sufficient motivation of record to make the rejections proper.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant states the modification of Yanus et al. and Badesha et al. suggested by the Office would not function. In the absence of evidence showing the modification of record would not work, the Office maintains the rejections of record are proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lyle A Alexander/
Primary Examiner, Art Unit 1797

Lyle A Alexander
Primary Examiner
Art Unit 1743